IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 144 of 1993

WITH

CRIMINAL APPEAL NO.145 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL AMRUTBHAI SOMABHAI & Ors.- Appellants
Versus
STATE OF GUJARAT - Opponent

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Appearance :
MR PRAKASH K JANI for Appellants,
MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 07/02/2007

ORAL COMMON JUDGMENT

These two appeals are arising out of the

judgment and order dated 12th January, 1993 rendered by the learned Special Judge, Mehsana, in Essential Commodity Case No.12 of 1988 whereby the appellants-accused were convicted for the offence punishable under Section 5 of the Fertilizer (Control) Order, 1985 and under Section 3 of the Essential Commodity Act and were sentenced them to undergo rigorous imprisonment for three months and to pay a fine of Rs.100/-, in default thereof, to undergo seven days imprisonment. Criminal Appeal No.145 of 1993 is filed by the Pundhra Khedut Group Vividh Karyakari Sahakari Mandali Ltd., appellant No.1-original accused No.1, appellant No.2-original accused No.2, Arvindkumar Jibhaidas Patel and appellant No.3-original accused No.3, Dahyabhai Jesingdas Patel. Since both the appeals arise out of same judgment and order based on same set of evidence, oral as well as documentary, they are being heard and disposed of by this common judgment.

2. The original accused No.1 was the Co-operative society, original accused Nos.2 and 3 were President and Secretary, respectively of accused No.1-Co-operative Society and original accused No.4 was the store keeper. It is alleged that while selling the fertilizer, all the accused persons were responsible to maintain the relevant record qua the stock and list of disbursement of fertilizer to the farmers. They were supposed to issue bills to each farmers who purchased the fertilizer but, when the inspection was carried out on 7th August, 1987, by Agricultural Inspector, Vijapur, certain irregularities were found. This inspection was made at the instance of one complaint received from Bholabhai Harjivandas Patel, farmer and resident of village Pundhra and one another complaint received from one of the members on 30th July, 1987. The Agricultural Inspector on the date of inspection found that some bags of fertilizers were sold without issuing bills. It was also found that 324 begs of KRIBHCO Uria, 24

bags of D.A.P. IFCO, 40 bags of Super Phosphate (Granules), 21 bags of ammonium sulphate, 9 bags of murate of potash and 70 Kg. Ammonium phosphate were required to be lying there with the co-operative society but that stock was not there and the Agricultural Inspector was informed that the same has been sold to various farmers, but the bills for selling the same were not issued. It is the say of the prosecution that the above-stated stock of fertilizer items was misappropriated or otherwise sold by charging higher prises or it was delivered to somebody so that the same can be sold in black-market. The allegation in the complaint is that the above stock was distributed and sold without issuing bills. As per scheme of Section 5 and 21 of the Act, all the accused were supposed to issue bills or cash memo or debit memo in the prescribed format. It is clear from the scheme that the control order is issued to regulate the distribution of fertilizer items amongst the farmers and it may not be used for any other

motive or purpose.

3. Mr.Jani, learned Advocate for the appellants has taken me through oral as well as documentary evidence led during the course of trial and has assailed the legality and validity of the judgment under challenge on various grounds.

4. Learned A.P.P., Mr.Desai, has resisted this submission and according to him the order of conviction and sentence passed by the learned Special Judge is based on sound reason and there is no need to interfere with the same. Ultimately, the co-operative society should act in accordance with law, so also, being a responsible person, accused Nos.2 and 3 were directly concerned with the management of the society and accused No.4 being a store keeper, ought not to have delivered a single bag of fertilizer items unless the member farmer produces either a credit or debit memo from the

godown. Of course the breach is technical but when on factual matrix it is established that large number of fertilizer bags had been disposed of without issuance of bills, the appellants-accused were required to be convicted and therefore they have been convicted.

5. Mr.Jani, learned Advocate, for the appellants while developing his argument of course has made number of submission but mainly he has concentrated on one legal aspect that the conviction requires to be quashed because the complainant was not authorized to institute a criminal proceeding considering the relevant scheme of Section 12 (AA) of the Essential Commodity Act, 1959. This being a prosecution for the offence punishable under the Essential Commodities Act then a complaint ought to have been filed by the authorized Officer. Merely because the complainant is a Government Officer or a public servant, the complaint would not become sustainable.

6. According to Mr.Desai, the accused should not be permitted to raise this technical plea unless he is able to satisfy the Court that the filing of a complaint by the Officer, Mr.Mohanbhai Gopalbhai Goti, Assistant Director, Agricultural, (Quality Control) has resulted into serious prejudice to them. But, it is rightly submitted by Mr.Jani that the learned Judge ought not to have even take cognizance and in an unsustainable complaint how the order of conviction would sustain. It is true that at present even Agriculture Inspector can institute a prosecution for the offence punishable under the Essential Commodities Act on account of Notification published by the State Government dated 2nd February, 1996 but the crucial question put by Mr.Jani is that whether Assistant Director, Agriculture was competent to bring the cause before the Court in form of criminal complaint and according to him the complainant was not authorized to initiate a criminal

proceeding against any of the accused. In support of his submission, Mr.Jani has placed reliance on one judgment of this High Court (Coram: S.R.Brahmbhatt, J.) passed in Criminal Revision Application No. 395 of 1999 on 30th June, 2006.

7. When the present matter was listed for final hearing and argument was heard, Mr.Desai, has sought time and he has been offered more than requested time so that he can produce Notification with the help of the concerned Department to satisfy the Court that Assistant Director, Agriculture was entitled to initiate criminal proceeding as per Scheme of Section 12 (AA), which was operative at relevant point of time in the year 1987. The inspection was made in the year 1987 and the criminal case was instituted in the year 1988 and Section 12 (AA) was inserted by the Legislation in Act of 1981 and the learned Judge in above cited decision has considered the effect of scheme of Section

12(AA)(1) of the Essential Commodities (Special Provision) Act; 1989. For the sake of brevity and convenience and as the nullity is applicable to the facts of the present case, I would like to reproduce the relevant part of the above cited judgment. In the cited decision, the Court is dealing with an order passed by the learned Additional Sessions Judge & Special Judge, Bhavnagar, in Criminal Case No. 2 of 1987 on 25th February, 1999 below application at Exh.10.

> *"The contention taken in the revision application is that the trial Court has accepted overruled judgment and ratio, which is, in fact, misconceived. In fact, the contention taken on behalf of the prosecution is that the provisions of Section – 11 of the Essential Commodities Act, empowers any public servant to maintain the complaint in Special Court. It been appropriately dealt with by the trial Court. It is required to be noticed that the trial Court has essentially allowed the discharge application Exh.10 on the ground that the complaint was not maintainable as*

it was not filed by the competent and authorized officer. The trial Court has relied upon the decision of Patna High Court reported in ***1991 Criminal Law Journal Page-720*** *in case of* ***Suresh Singh V/s. The State of Bihar*** *and has recorded its finding that the complaint was not filed by the competent officer, who is specially authorized to file the complaint before the Special Court against the accused. The reliance placed by the prosecution on the provisions of Section – 11 and/or by the applicant on the provisions of Section – 21 of the Code of Criminal Procedure, defining the public servant, would be of no avail to the application, in view of the fact that the Essential Commodities Act being a Special Act shall be viewed in its proper perspective. The Section - 11 of the Essential Commodities Act; 1955, though, provides that the complaint could be filed and maintained by the public servant as defined under Section – 21 of the Indian Penal Code but Section 12(AA)(1)(e) of the Essential Commodities (Special Provision) Act; 1981, which makes special provision by way of amending the Essential Commodities Act; 1955, provides that, the Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made*

by an Officer of the Central Government or a State Government authorized in this behalf by the Government concerned or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial. Thus, the complainant, who was acting in his capacity as public servant was required to have the special authorization under Section 12(AA)(1)(e) of the Essential Commodities (Special Provision) Act; 1989 for lodging and maintaining the complaint against the accused person in Special Court. The trial Court has recorded that despite ample opportunity given to the complainant and prosecution for production of such authorization, it was not produced before the Court and therefore, it was recorded by the trial Court that the complainant lacked the authorization to file the complaint. The applicant's reliance upon the Notification dated 2nd February, 1996 showing that the Agricultural Inspector was authorized is of no avail in view of the fact that the authority if at all shall not be treated to have been conferred upon the Agricultural Inspector with retrospective effect. In fact, the requirement of issuance of

Notification in the year 1996 appointing and authorizing the Agricultural Inspector to lodge prosecution in respect of Clause – (e) of Sub-section (1) of Section – 12(AA) of the Essential Commodities Act. The Act, itself, goes to show that the public servant in his capacity as such without being a special authority could not have maintained the complaint."

8. In view of the above, the learned Judge ought to have acquitted the accused holding that the complaint is not maintainable as the same has not been filed by the authorized Officer. It was even possible for the prosecution to convince the Court that the Assistant Inspector, Agriculture was the authorized Officer to institute the prosecution under the Essential Commodities Act. In absence of such order or notification issued by the State Government, the Court shall have to accept the technical defence taken by the appellants without entering into merit of the case. Therefore, without touching the argument that has been advanced on

merit by both the sides, the Court is inclined to allow both the appeals by holding that the complaint was not maintainable.

9. In the result, both the Criminal Appeals are allowed. The judgment and order of conviction and sentence dated 12th January, 1993 rendered by the learned Special Judge, Mehsana in Essential Commodities Case No.12 of 1988 is hereby quashed and set aside. The appellants are acquitted of all the charges levelled against them. Fine, if paid by the appellants, is ordered to be refunded to them.

9.1 Bail Bond of the appellants-accused shall stand discharged. Order and Direction accordingly.

(C.K.BUCH, J.)

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